

In the Matter of the Petition of)  
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           PU'UIWAIWA, LLC         )  
 )  
 For a Declaratory Ruling.         )

Commission, State of Hawaii  
Karen Higzel.

In the Matter of the Petition of)  
                                   PU'UIWAIWA, LLC                                  )  
 For a Declaratory Ruling.  )

Order No. 23556

<sup>1</sup>Petition for Declaratory Ruling; Exhibits A and B; Verification; Consent in Writing of the Managing Member of Pu'uiwaiwa, LLC; and Certificate of Service, filed on June 25, 2007 (collectively, "Petition"). Petitioner: (1) filed its Petition pursuant to Hawaii Administrative Rules ("HAR") chapter 6-61, subchapter 16, governing declaratory orders; and (2) served copies of its Petition upon the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate"), an ex officio party to this proceeding, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a).

dba WEST HAWAII WATER COMPANY ("WHWC").<sup>2</sup> The Land Owners plan to utilize the parcels of land as agricultural lots.

2. The Land Owners submitted a request for water service to WHWC. In response, WHWC informed the Land Owners that: (A) WHWC only has potable water available; and (B) subject to the system-wide availability of water and pursuant to certain terms and conditions, WHWC has the capacity to provide water service to the Land Owners. As a courtesy, WHWC also provided the Land Owners with an estimated amount of the contribution-in-aid-of-construction ("CIAC") fee the Land Owners will have to pay to WHWC as a condition of receiving water service.

3. The estimated amount of the CIAC fee, together with the off-site water system construction costs, are cost prohibitive to the Land Owners and have forced them to look at other alternatives.

4. One option is for the Land Owners to develop their own private, non-potable water system on one of the parcels of land that is jointly owned by Kilauea Trust I and Waimea Limited Partnership. The proposed private water system would be owned by the Land Owners and only be used to provide water for fire

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<sup>2</sup>WHWC is a public utility that provides water service within its service area of Waikoloa Village, island of Hawaii. See In re Waikoloa Water Co., Inc., dba West Hawaii Water Co., Docket No. 04-0373; see also In re Waikoloa Water Co., Inc., dba West Hawaii Water Co., Docket No. 97-0066, Decision and Order No. 15495, filed on April 11, 1997 (WHWC started operations prior to 1978, and thus, is exempt by law from the requirement to obtain a certificate of public convenience and necessity); and HRS § 269-7.5(d).

protection and pasture use to the Land Owners land. Potable water demand would be met with bottled water.

5. "In the future the Land Owners may further subdivide the parcels into 47 large agricultural lots and sell some of the lots. At that time, the Land Owners will turnover the private water system to a Water Association whose members would all be lot owners within the 47 lots. Ownership within the subdivided 47 lots will require membership in the Water Association."<sup>3</sup> "The Water Association, a non-profit corporation, will own and operate the Water System for the sole use of its members that control the Water Association. At no time, will water from the Water System be supplied to the public, as a class, or to any limited portion of it. The Water System will only serve members of the Water Association."<sup>4</sup>

6. "Land Owners are unaware of any law or rules that would prohibit them from developing their own private water system to serve themselves . . . . Additionally, the Land Owners only want non-potable water for fire protection and pasture use. WHWC is only able to provide the Land Owners with potable water at an excessive cost. Thus, if the Land Owners are required to take water from WHWC they would be forced to take potable water and use that water for fire protection and pasture use. This would be against public policy to use good potable water for fire protection and pasture use, when the Land Owners can meet this need with a private non-potable system. Accordingly, [it is]

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<sup>3</sup>Petition, at 5.

<sup>4</sup>Petition, at 9 (footnotes and citations therein omitted).

Petitioner's position that it . . . may develop its own private water system within WHWC's service territory."<sup>5</sup>

Based on the foregoing information, Petitioner requests that "a declaratory order be issued stating that it may develop its own private water system within WHWC's service territory and that since the Land Owners' water system will only serve its owners; i.e. Petitioner, Land Owners, or members of the Water Association, the [Land Owners' private, non-potable] Water System is not a public utility and is not subject to the Commission's jurisdiction."<sup>6</sup>

## II.

### Discussion

HAR chapter 6-61, subchapter 16, governs declaratory orders issued by the commission. HAR §§ 6-61-161 and 6-61-163 state in relevant part:

§6-61-161 Form and contents. A petition for declaratory order must conform to the requirements of subchapter 2 and contain the following:

. . . . .

(5) Proof of service on the affected public utility, motor carrier, or water carrier and on the consumer advocate.

§6-61-163 Dismissal of petition. The commission may, without notice or hearing, dismiss a petition for declaratory ruling that fails to comply with the requirements of this subchapter.

HAR §§ 6-61-161 and 6-61-163.

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<sup>5</sup>Petition, at 5 - 6.

<sup>6</sup>Petition, at 9 - 10.

Here, it is undisputed that the Land Owners seek a commission ruling on whether it is permissible for them to establish a non-regulated, non-potable water system within WHWC's service territory. Thus, the commission finds that, under the circumstances, WHWC is an "affected public utility" that may have an interest in this matter. However, the Certificate of Service attached to the Petition certifies that two copies of the Petition were served upon the Consumer Advocate, with no corresponding service upon WHWC, the affected public utility. Accordingly, pursuant to HAR §§ 6-61-161(5) and 6-61-163, the commission dismisses the Petition, without prejudice.<sup>7</sup>

### III.

#### Order


THE COMMISSION ORDERS that the petition for the declaratory ruling, filed on June 25, 2007, is dismissed, without prejudice.

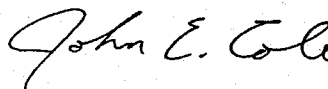
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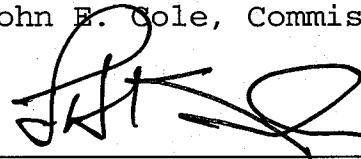
<sup>7</sup>As a courtesy, the commission will serve copies of this Order upon WHWC and its counsel of record.

DONE at Honolulu, Hawaii JUL 20 2007.

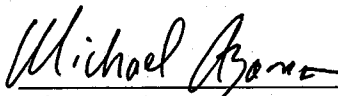
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
John E. Cole, Commissioner

By   
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

  
Michael Azama  
Commission Counsel

2007-0171.cp

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 23556 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DIVISION OF CONSUMER ADVOCACY  
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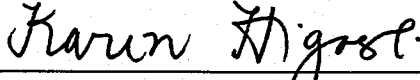
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DEVELOPMENT MANAGER  
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Certificate of Service  
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Counsel for WEST HAWAII WATER COMPANY

  
\_\_\_\_\_  
Karen Higashi

DATED: JUL 20 2007